IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :- 20.02.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.2188 of 2002

C.Japamani ... Appellant

vs.

1. The Government of India,
Represented by its Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
Department of Pensions and
Pensioners Welfare, 6th Floor,
Nirvachan Sadan, New Delhi.

2. The Commandant,
C.I.S.F, FSTPP, Farakka,
Nabarun Post,
Murshidabad District,
West Bengal.

3. The Accounts Officer,
Regional Pay and Accounts Officer,
C.I.S.F. Ministry of Home Affairs,
I.B.B.D. Bagh, (East),
Old Currency Building,
Calcutta 700001.

4. The Director General,
C.I.S.F. Head Quarters,
Block No.13, E.G.O. Complex,
Lodhi Road, New Delhi-110 003.

5. The Senior Accounts
Officer (Administration),
Principal Accounts Office,
Ministry of Home Affairs,
North Block, New Delhi-110 001. ... Respondents

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Appeal against the Order of the learned single Judge, dated 25.02.2002, passed in W.P. No.11762 of 1999 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the decision in D.P & P.W.U.C.No.13712/97-P & PW(C) dated 20.10.97 taking by the Fifth Respondent referred to in his letter dated 27.10.97 and intimated to the second Respondent by the Third respondent's letter dated 31.10.97 and to the petitioner by the order dated 14.11.97 of the Second Respondent, quash the same and direct the Respondents to grant disability pension to the Writ Petitioner from 01.01.90 on which date he was discharged from his job as Sub-Inspector, Central Industrial Security Force with all arrears of Pension forthwith.

For Appellant : Mr.D.Prabhu Mukunth Arun Kumar,
for Mr.A.Thirumoorthy.

For Respondents : Mr.P.Wilson, Assistant
Solicitor General.

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above Writ Appeal is directed against the order of the learned single Judge, dated 25.02.2002, passed in W.P. No.11762 of 1999, in and by which, the learned Judge dismissed the Writ Petition filed by the writ petitioner as not maintainable.

2. For convenience, we shall refer the parties as arrayed before the learned single Judge.

3. According to the petitioner, he is an ex-serviceman. He joined the Indian Army and worked as Subedar. After 19 ½ years of service, he retired from Army Service in the year 1976. Thereafter, he joined the Central Industrial Security Force (CISF) on 08.07.1978 as Assistant Sub-Inspector and, after putting in 7 years of service, he was promoted as Sub-Inspector. In 1990, he was boarded out of service on account of his disablement and the disability was certified as 80%. Accordingly, he was relieved from duty on 16.01.1990. Eleven months after his retirement, the Accounts Officer, Regional Pay and Accounts Office, released invalid pension though he was eligible for disability pension as per relevant Rules. The respondents did not release the disability pension; therefore, he made a representation on 07.12.1990. The Deputy Commandant, CISF, by letter dated 14.07.1992, sent to the Chief Medical Officer of Health, Malda, a copy of which had been marked to the petitioner, called for the opinion of the Medical Board. Thereafter, by letter dated 17.11.1993,

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the Commandant, CISF Unit, Farakka, advised the petitioner to report to the District Hospital, Malda, for a detailed Medical check up. By letter dated 21.12.1993, the petitioner requested the 2nd respondent / Commandant to permit him to have medical check up at a place nearer to his town. The Director General / R4, by letter dated 16.09.1994, instructed the D.I.G, CISF, to make arrangements by deputing staff to contact the medical authority at petitioner's native place for conducting a second medical examination and accordingly, the same was conducted on 24.10.1994. The Board assessed the disability as 80%. The Commandant enclosed the original Medical Board Proceedings dated 24.10.1994 along with his letter dated 24.11.1994 addressed by him to the Accounts Officer. By letter dated 24.12.1994, the Commandant recommended for disability pension and requested the Accounts Officer for early action. However, the petitioner's case was rejected by the Accounts Officer, which necessitated him to file W.P. No.2122 of 1996 for directing the respondents to grant disability pension from 16.01.1990. By Order dated 10.07.1997, the said Writ Petition was disposed of with a direction to the respondents to pass orders within three months. Thereafter, the petitioner received a letter dated 14.11.1997 from the Commandant, CISF Unit, FSTPP, Farakka, stating that the disability pension is not admissible to him. Questioning the said Order, he filed W.P. No.11762 of 1999.

4. On behalf of the respondents, the Commandant, CISF Unit, Farakka, West Bengal - 2nd respondent filed a counter affidavit disputing various averments made in the affidavit filed in support of the Writ Petition. It is mainly stated that, as per the Government of India, Finance Office Memorandum No.F.19(2) CV (A) 104, dated 03.06.1965, appeal against the first Medical Board's report must be made within one month from the date on which the findings of the Board were made known to the Government Servant. The petitioner had made his objection against invalid pension after lapse of almost one year from the date of report of the first Medical Board. Further, the 2nd Medical Board did not certify to the effect that it had been given full knowledge of the fact that the person concerned had already been examined by a Medical Board who had given their opinion as to the disease in respect of which the Government Servant was incapacitated. It is further stated that the 2nd Medical Board at the native place of the petitioner, after almost five years, suo motu cannot state that the petitioner was affected by disease during the tenure of his service. It must be specifically mentioned in the medical report that the nature of government service was responsible for the disease.

5. With the above pleadings, the learned Judge considered the claim of both sides. After noting that the claim of the petitioner was considered and rejected in the earlier Writ Petition viz., W.P. No.2122 of 1996, and that he cannot seek for a similar direction in the present writ petition, the learned Judge dismissed W.P. No.11762 of 1999. Questioning the said order, the petitioner has filed the present Appeal.

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6. Heard learned counsel for the appellant as well as learned Assistant Solicitor General appearing for the respondents.

7. The only point for consideration in this appeal is as to whether the petitioner has made out a case for grant of disability pension and the learned Judge is right in dismissing the writ petition.

8. First of all, let us clarify the reasoning and ultimate conclusion of the learned Judge for dismissing W.P. No.11762 of 1999. The relevant paragraph, namely, para No.9 of the order of the learned Judge, shows that the petitioner had earlier filed W.P. No.2122 of 1996 claiming disability pension and the same was rejected, hence, 2nd writ petition for the same relief cannot be sustained. We are unable to accept the said conclusion for the following reasons. In WP No.2122 of 1996, the petitioner prayed for the issuance of a writ of mandamus, directing the respondents to grant disability pension to him from 16.01.1990 on which date he was discharged from his job as Sub Inspector, CISF, with all arrears of pension. After hearing the counsel for petitioner as well as the Additional Central Government Standing Counsel, one of us (P.Sathasivam, J.), after finding that there is no need to go into the merits and the claim made by the petitioner, disposed of WP No.2122 of 1996 by directing the 3rd respondent - Accounts Officer, CISF, Ministry of Home Affairs, to consider the claim of the petitioner in accordance with law and pass appropriate orders within three months from the date of receipt of copy of that order. In the same order, it was clarified that, while disposing of the claim of the petitioner, the third respondent is expected to get all clarifications from respondents 1 and 2 if need arises. Thus, it is clear that, while disposing of W.P.2122 of 1996, the court had no occasion to go into the merits and it merely directed the 3rd respondent therein to pass appropriate orders in accordance with law.

9. Coming to the merits of the claim of the petitioner that he was invalidated that too during the course of service and eligible for disability pension, heavy reliance was placed on the opinion of the 2nd Medical Board. Learned Assistant Solicitor General, by taking us through various averments in the counter affidavit, contended that the 2nd Medical Board was not constituted in accordance with Rules/Procedure. He also contended that there is no specific opinion/conclusion to the effect that the disability was caused due to his service with the respondents (CISF). In view of the above contentions, we verified the relevant documents, the stand taken by the respondents in the earlier writ petition as well as the information available from various communications. It is seen from the letter of the Commandant, CISF, dated 08.06.1993, that for want of definite opinion in the first medical report his claim for disability pension was not recommended. Though it was argued that the 2nd Medical Board was not in accordance with procedure/instruction, learned counsel appearing for the petitioner has brought to our notice the specific averments made in the counter affidavit of the commandant/CISF Unit,

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F.S.T.P.P., Farakka, dated 24.06.1997, filed in W.P. No.2122 of 1996. In the counter affidavit, in para No.5, the deponent has specifically stated thus,

> "... However, on humanitarian ground to provide him the extra monetary benefits, a 2nd Medical Board was arranged at his native place. .."

It is also relevant to mention that, in the same counter affidavit, in para No.3, the officer has mentioned about the 2nd Medical Board and their opinion regarding the disease of the petitioner. The following statement in the said paragraph is relevant,

> " ..... The 2nd Medical Board had, however, on 24-10-94 endorsed the required certificate to the effect that "the disability is attributable with his Govt. service and had been aggravated during his service tenure". "

The above information makes it clear that, first of all, the Medical Board was constituted at the instance of the Department and a specific opinion was given by the Board that the disability suffered by the petitioner is attributable to his service and that the disease got aggravated during his service tenure. The above assertion and the statement of the Officer cannot be ignored lightly. It is also relevant to mention the detail given in letter No.V-15014/CHPT/LC/119/2002/739 of the commandant, CISF, Chennai, dated 23.01.2003, which shows that the 2nd medical report confirms that the candidate (writ petitioner) comes under the claimed category. All the above mentioned particulars particularly the opinion of the 2nd Medical Board clearly show that the disability is attributable to his Government service and that the disease got aggravated during his service tenure. These relevant aspects have not been taken note of by the respondents as well as the learned single Judge. It is also relevant to point out that though the learned Assistant Solicitor General has pointed out that the procedure applicable for constitution of 2nd Medical Board has not been followed; as mentioned in the earlier paragraphs, the said Medical Board was not constituted at the instance of the writ petitioner. In those circumstances and in the absence of specific provisions, we are of the view that the report of the 2nd Medical Board cannot be rejected on the ground that certain conditions have not been fulfilled/satisfied. Accordingly, we reject the said contention of the learned Assistant Solicitor General.

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In the light of our discussion, the impugned proceedings of the respondents are quashed and the respondents are directed to grant disability pension to the writ petitioner from 16.1.1990 on which date he was discharged from his service as Sub Inspector, CISF, with all arrears of pension. The arrears shall be paid within a period of 8 weeks from the date of receipt of copy of this order. Writ Appeal is allowed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1. The Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
Department of Pensions and Pensioners Welfare,
6th Floor, Nirvachan Sadan,
New Delhi.

2. The Commandant,
C.I.S.F, FSTPP,
Farakka, Nabarun Post,
Murshidabad District, West Bengal.

3. The Accounts Officer,
Regional Pay and Accounts Officer,
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New Delhi-110 003.

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5. The Senior Accounts Officer (Administration),
Principal Accounts Office,
Ministry of Home Affairs,
North Block, New Delhi-110 001.

1 cc To Mr.A.Thirumurthy, Advocate, SR.9998.
1 cc To Mr.P.Wilson, A.S.G, SR.9931.

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